

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-8162-2015 (O&M)

Date of decision : 06.04.2015

Nirmal Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Parminder Singh-I, Advocate,
for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab,
assisted by HC Gursharan Singh.

Mr. N.S. Boparai, Advocate,
for the complainant.

JITENDRA CHAUHAN, J. (Oral)

This is the second petition filed under Section 438 of the Code of Criminal Procedure, for grant of anticipatory bail to the petitioner in case FIR No.150 dated 27.10.2014, registered under Sections 307, 323, 341, 506, 148, 149 of the Indian Penal Code, (for short, 'the IPC') at Police Station Bhawanigarh, Distt. Sangrur.

The present petition has been filed on the basis of the inquiry report dated 19.01.2015, prepared by the Deputy Superintendent of Police, Sub Division, Sangrur, wherein, it has been

asserted that no incriminating evidence could be collected against the petitioner during the inquiry. After the preparation of the inquiry report, the petitioner approached the learned Additional District Judge and interim anticipatory bail was granted vide order dated 19.02.2015. However, during the interregnum period, in an application moved by the investigating agency seeking release of the accused and the protest petition filed by the complainant, Balwant Singh, the learned Additional Chief Judicial Magistrate, Sangrur, vide order dated 13.02.2015, noticed as under:-

“8. The inquiry officer is required to go deep into the facts of the case. In case, the version of the inquiry officer is to be believed, then the inquiry officers have not given any report about the other injuries sustained by Pardeep Singh and the complainant. The inquiry officers were required to establish on record as to who has caused injuries upon Balwant Singh and Pardeep Singh, which fact is missing in their report. All the persons, who had caused injuries, especially the injuries which were dangerous to life, have been exonerated during the inquiry proceedings.”

This is also to be noticed that subsequent to grant of interim anticipatory bail vide order dated 19.02.2015, the Court of learned Additional Sessions Judge, Sangrur, passed a fresh order dated 03.03.2015, whereby, the bail petition filed by the petitioner was dismissed. It has been specifically noticed in the order that the petitioner concealed the fact of earlier bail petition filed under Section 438 Cr.P.C., before this Court, which was dismissed on 11.12.2014

Even without advertting to the question of maintainability of the present petition, the conduct of the petitioner in concealing material facts before the Court of learned Additional Sessions Judge, disentitles him of the discretionary relief. It is apparent that the petitioner has not approached this Court with clean hands.

In ***Rama Shankar Singh Vs. State of U.P., 1988(1) MWN (Cr.) 117***, the Hon'ble Allahabad High Court has held as under:-

“10. This Court has examined the record of the case and has also read the orders delivered by Hon'ble Jafri, J on 14 December, 1987. This Court after considering every aspect of the matter does not see any reason to differ from the order of 14 December, 1987, aforesaid. It is difficult for this Court to take another view then it is on record that between the applicant

who had joined the accused and another co-accused the bail rejected by this Court on 16 April, 1987, 13 May, 1987 and 5 June, 1987 was concealed from the Sessions Judge, aforesaid. This was or relevant fact. The last of the applicants seeking bail was the applicant before this Court on 5 June 1987. Between 5 June, 1987 and 29 July, 1987 when the second bail application was being presented before the learned Sessions Judge, aforesaid, there could not be a bona fide plea that the trial had been delayed for the duration of the six weeks. But, given the circumstances that the orders rejecting the bail by the High Court being concealed, it gives the impression to the Court considering ostensibly a bail application and in reality a second bail application, as if the accused were languishing in jail without their application for bail being considered at all. This is precisely what had happened in the present case. If the record of the earlier orders of the High Court rejecting the bail

applications is concealed, then inevitably, the learned Sessions Judge was under the impression that it was appropriate to grant bail for the first time; the learned Sessions Judge in so far as the applicants are concerned was deliberately put under the impression as if no bail application had been considered earlier by any Court.

11. It is difficult for this Court to take a view, different from the one taken by the Hon'ble S.I. Jafri, J. as this Court also feels that fraud vitiates all proceedings and the consideration of bail is no exceptions.

12. In so far as the second bail application moved before the Sessions Judge, aforesaid, is concerned it has rightly been rejected so that no party takes advantage of fraud upon blatant and intentional concealment of facts.”

The Hon'ble Apex Court in ***Hari Singh Mann Vs. Harbhajan Singh Bajwa, (2001) 1 Supreme Court Cases 169***, has held as under:-

“We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of the main petition on 7.1.1999, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of Code of Criminal Procedure or the rules of the Court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because the respondent NO.1 was an Advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30th April, 1999 and 21st July, 1999 could not have been passed by the High

Court under its inherent power under Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the court.

There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. This Court in [State of Orissa v. Ram Chander Agarwala](#) [AIR 1979 SC 87] held:

"Before concluding we will very briefly refer to cases of this Court cited by counsel on both sides, 1958 SCR 1226: (AIR 1958 SC 376) relates to the power of the High Court to cancel bail. The High Court took the view that under S.561A of the Code, it had inherent

power to cancel the bail, and finding that on the material produced before the Court it would not be safe to permit the appellant to be at large cancelled the bail, distinguishing the decision in 72 Ind App 120: (AIR 1945 PC 94) (supra) and stated that the Privy Council was not called upon to consider the question about the inherent power of the High Court to cancel bail under [S.561A. In Sankatha Singh v. State of U.P. \(1962\) Supp \(2\) SCR 871: \(AIR 1962 SC 1208\)](#) this Court held that S.369 read with S.424 of the Code of Criminal Procedure specifically prohibits the altering or reviewing of its order by a court. The accused applied before a succeeding Sessions Judge for re-hearing of an appeal. The learned Judge was of the view that the appellate court had no power to review or restore an appeal which has been disposed of. The Supreme Court agreed with the view that the appellate court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgment, which does not comply with the requirements of S.367 of the Code, may

be liable to be set aside by a superior court but will not give the appellate court any power to set it aside itself and rehear the appeal observing that "Sec.369 read with S.424 of the Code makes it clear that the appellate court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error. Reliance was placed on a decision of this Court in Supdt. and Remembrancer of Legal Affairs W.B. v. Mohan Singh, AIR 1975 SC 1002 by Mr.Patel, learned counsel for the respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the respondent clearly lays down, following Chopra's case (AIR 1955 SC 633) (supra) that once a judgment has been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction. This

Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of S.561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code."

Keeping in view that the petitioner is specifically named in the FIR, specific role has been attributed to him, this is the second petition under Section 438 Cr.P.C., the maintainability of the same is disputed in view of the fact that the petitioner has concealed the material fact, this petition deserves to be dismissed. Ordered accordingly.

Dismissed.

06.04.2015
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(JITENDRA CHAUHAN)
JUDGE

Note : Whether to be referred to Reporter : Yes